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**Datasheet for the decision  
of 12 September 2011**

**Case Number:** T 0170/11 - 3.3.10

**Application Number:** 99911391.3

**Publication Number:** 1061816

**IPC:** C07C 37/74

**Language of the proceedings:** EN

**Title of invention:**

Products containing polyphenol(s) and L-arginine to stimulate nitric oxide production

**Patentee:**

Mars Incorporated

**Opponent:**

NESTEC S.A.

**Headword:**

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**Relevant legal provisions:**

EPC Art. 108  
EPC R. 101(1)

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Missing statement of grounds"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0170/11 - 3.3.10

**DECISION**  
of the Technical Board of Appeal 3.3.10  
of 12 September 2011

**Appellant:** NESTEC S.A.  
(Opponent) P.O. Box 353  
CH-1800 Vevey (CH)

**Representative:** Wright, Robert Gordon McRae  
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**Respondent:** Mars Incorporated  
(Patent Proprietor) 6885 Elm Street  
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Virginia 22101-3883 (US)

**Representative:** Keen, Celia Mary  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
21 October 2010 concerning maintenance of  
European patent No. 1061816 in amended form.

**Composition of the Board:**

**Chairman:** P. Gryczka  
**Members:** C. Komenda  
F. Blumer

## **Summary of Facts and Submissions**

I. This is an appeal against the interlocutory decision of the Opposition Division of the European Patent Office posted 21 October 2010 concerning maintenance of the European Patent No. 1061816 in amended form.

A notice of appeal on behalf of the Appellant (Opponent) was filed on 22 December 2010. The appeal fee was paid on the same day. No separate statement of grounds of appeal was filed.

II. By a communication dated 25 March 2011 sent by registered letter with advice of delivery, the Appellant was informed that no statement of grounds of appeal had been filed and that, therefore, it was to be expected that the appeal would be rejected as inadmissible pursuant to Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC. The Appellant was invited to file observations within two months. A copy of the communication was sent to the Respondent (Patentee) on the same day for information.

III. No answer has been given to the communication within the time limit.

## **Reasons for the Decision**

As no written statement setting out the grounds of appeal has been filed and as the notice of appeal does not contain anything that could be regarded as statement of grounds of appeal according to Article 108 EPC, the appeal has to be

rejected as inadmissible (Article 108 EPC in conjunction with Rule 101(1) EPC).

**Order**

**For these reasons it is decided that:**

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

C. Rodríguez Rodríguez

P. Gryczka